22.05.2024
item No.18
Rakib (PA)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 1455 of 2023

Kalyan Kumar Sen & Anr.
-Versus-
The State of West Bengal & Anr.

Mr. Ayan Bhattacharya,
Ms. Sanjana Sinha.
Ms. Moumita Ghosh.
…. For the Petitioners.

Mr. Debasish Roy,
Mr. Arijit Ganguly,
Ms. Srimoyee Roy.
….For the State.

The present revisional application has been preferred challenging the proceedings of Hare Street Police Station case no. 142 dated 14.04.2006 pending before the learned Metropolitan Magistrate, 5th Court Calcutta.

The criminal case being Hare Street police station case no. 142 dated 14.04.20226 was registered for investigation on the basis of a direction passed by the learned Chief Metropolitan Magistrate, Calcutta where in an application under Section 156(3) of the Code of Criminal Procedure, specific direction was passed for registration of FIR directing the Officer-in-charge, Hare Street police station to treat the petition of complaint as FIR and investigate the case.

The complainant namely, Sunil Kumar Agarwal filed the application under Section 156(3) of the Code of Criminal Procedure against Bank of Baroda, International Business Branch; B.K. Sinha, Assistant General Manager of the bank and branch; S. Baidyanathan, General Manager, Bank of Baroda, Eastern Zonal Office and Anil Kumar Khendelwal, Chairman-cum-Managing Director of Bank of Baroda. The allegations against the accused persons were that the complainant was dealing with the Bank of Baroda as his regular banker which was involved in his day to day financial activities and as such he was maintaining a current account being no. 1266 in the name of his business i.e. "S.A International". On or about 20.10.1995 the complainant created a fixed deposit of Rs.1,88,000/- for a period of 46 days in the name of his business firm with Bank of Baroda, International Business Branch and the said amount was debited from the current account no.1266 of the complainant on the same day. After expiry of 46 days the matured amount was Rs.1,90,132/-. The said amount should have been transferred to the current account no.1266 of the complainant in the same bank and the complainant received a credit advice and trusted the petitioner bank. However, in February, 1996 the said bank on verbal follow-up represented that the amount of Rs.1,90,132/- has already been credited in his current account no.1266 but on the subsequent date the said transaction was deleted by the bank behind his back and without intimating him. As soon as the complainant came to know of such deletion in respect of the transaction he informed the Chief Manager, Bank of Baroda. However, the said amount of Rs.1,90,132/- was not credited to his current account no.1266. On repeated persuasion, although the bank verbally assured the complainant, but did not rectify their mistake and as the complainant reposed trust, faith because of the long standing relations he found that the said amount was never credited and time was consumed. In the year 2004 complainant again requested the bank authorities to credit the said amount including the interest which accrued because of retention of such money, however, the bank authorities did not respond. The complainant communicated the same to the General Manager and all other authorities but there was no response from their end. All of a sudden the Chief Manager of Bank of Baroda mis-represented the complainant that the amount of Rs.1,88,000/- and the interest accrued has been credited to his current account on 26.12.1995. Complainant alleges that the same was mala fide, motivated and with a dishonest intention as the said amount was never deposited to his current account no.1266. Complainant also informed the Chief Vigilance Officer of Bank of Baroda to take appropriate action against the erring official of the bank and to credit the said amount along with interest. However, there was no response from the bank authorities and the complainant therefore, was under belief that the same is a conspiracy to mis-appropriate his money at the instance of the bank officer who embezzled the same and as such was responsible for committing offences under Sections 409/120B of the Indian Penal Code.

The investigating agency on conclusion of investigation submitted their charge-sheet under the same sections but in respect of different set of accused persons which included the present petitioners being Kalyan Kumar Sen, Siddhartha Bhattacharya who were working at the branch. The investigating authorities in order to substantiate their case relied upon 8 witnesses which included two police officers and 6 individuals including the complainant. The complainant in his statement under Section 161 of the Code of Criminal Procedure reiterated his contention and/or allegations made in the application under Section 156(3) of the Code of Criminal Procedure; CSW2, Deb Dulal Jana, supplied the necessary documents which included the debit advice dated 20.10.1995 and credit advice dated 26.12.1995 along with two carbon copies of current deposit ledger of Bank of Baroda in the name of M/s. S.A. International at the relevant point of time; CSW3, Mukul Bannerjee, also supplied the relevant documents to the investigating officer; CSW4, M.M.A. Rizvi, was the Chief Manager at Bank of Baroda and he by his letter dated 06.07.2006 named the concerned officers who were deployed at the Bank of Baroda and which included the name of the present petitioners namely Kalyan Kumar Sen (petitioner no.1), Siddhartha Bhattacharya (petitioner no.2) and another namely, Mr. Pankaj Ganguly; CSW5, Ajay Sen, was attached with the Bank as Departmental Head Manager who issued a credit advice in favour of M/s. S.A. International amounting to Rs.1,88,000/- which was kept as fixed deposit for 46 days since 20.10.1995 and also signed on the credit advice dated 26.12.1995; CSW6, Sujit Kumar Bhar, in his statement stated that he was Senior Manager of Bank of Baroda of the same branch who issued a debit advice in favour of M/s. S.A. International on behalf of the Bank for an amount of Rs.1,88,000/- which was deposited and was kept for 46 days which he signed on 20.10.1995.

There is a seizure list which was also available in the Case Diary which incorporated the following:

i) One original letter dated 11/01/2005 addressed to Deputy General Manager of the said Bank from Shri B.K. Sinha, Assistant General Manager of the said bank bearing his signature on it

ii) One original letter dated 06/07/2006 addressed to Assistant General Manager of the said bank

iii) One original letter dated 22/07/2006 addressed to Assistant General Manager of the said bank from M.M.A. Rizvi, Chief Manager

iv) One original copy of Account Opening Form in the name of M/s. S.A. International

I have taken into account the allegations made by the complainant and the materials collected by the investigating officer of the case on the basis of which the charge-sheet has been submitted. The basic allegation of the complainant was that he invested a sum of Rs.1,88,000/- in a fixed deposit account for a period of 46 days and thereafter the same matured with accrued interest amounting to Rs.1,90,132/-. There were representations on behalf of the bank that the said amount has been credited to his current account no.1266 but the same was never credited to his account and in spite of repeated follow-up he was unable to receive the proceeds which matured after being invested. The grievance of the petitioners are against the bank and its superior officers, however, the investigating officer discharged all the superior officers and implicated the present petitioners who were working at the branch. Surprisingly there is no evidence to show that such money was entrusted with the petitioners in their personal capacity, and prima facie materials reflect that the money which was invested has never been withdrawn from the bank or transferred to any other account. This leads to a conclusion that the money has been retained by the bank itself. The petitioners are officers of the bank and as such if the money is retained by the bank itself then the petitioners cannot be made accused for any misappropriations of the money as they never had the occasion to commit any breach of trust in respect of the money which has been kept with the bank. There are no materials to show that the petitioners have personally gained from such investment or non-payment, if any. Consequently, I am of the opinion that the petitioners are not liable to be prosecuted further for the alleged offences, as no offence under Section 409 of the Indian Penal Code has been made out against them.

Thus, all further proceedings of Hare Street Police Station case no. 142 dated 14.04.2006 (corresponding to G.R. Case no. 922/2006) wherein on completion of investigation charge-sheet has been submitted and the matter is pending before the learned Metropolitan Magistrate, 5th Court, Calcutta is liable to be quashed.

As such the revisional application being CRR 1455 of 2023 is allowed.

Pending connected applications, if any, are consequently disposed of.

Case Diary be returned to the learned Public Prosecutor appearing on behalf of the State.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)